

THE GOLDSTEIN LAW FIRM, A.P.C.

Established 1977

ATTORNEYS AT LAW

LABOR & EMPLOYMENT LAW NEWSLETTER

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***THE GOLDSTEIN LAW FIRM WISHES YOU
AND YOURS A HAPPY AND PROSPEROUS 2016***

I. Ten (10) Tips for New Years' Resolutions To Avoid Costly Labor, Employment and Wage and Hour Problems in 2016:

1. Make certain that you have an up to date Employee Handbook and legally enforceable Arbitration Agreements.
2. Be self-critical and examine your current employment policies and practices. Are they "2016 employment policies and practices" that will withstand an aggressive legal challenge or have you failed to keep up with the latest legal developments that put your company at risk? Most costly labor, employment and wage and hour lawsuits are caused by an organization's and/or company's failure to upgrade its policies, practices and training to comply with current state and federal laws.
3. Establish a Training Schedule for 2016. It is cost effective and essential that you have effective, timely training by knowledgeable trainers on the latest developments in labor, employment and wage and hour laws.
4. Make certain that your management training pays dividends because managers and supervisors learn how to spot and report problems early when they can be resolved internally.
5. Make certain that your management training gives managers and supervisors confidence that when they use the tools to productively hire the right employees, and to discipline and terminate employees, that their decisions will not be successfully challenged.
6. Have your current labor, employment, and wage and hour policies and practices audited by attorneys so that recommendations for any changes can be made under the Attorney-Client Privilege. Only labor, employment and wage and hour audits conducted by Attorneys are protected from disclosure. Self-audits, audits conducted by consultants, including human resources consultants and payroll companies, must be disclosed upon request during government investigations and in discovery in federal and/or state litigation.
7. If you have had previous cases involving wage and hour claims, make certain that you have taken corrective action to prevent the same or similar claims from being filed again by employees and former employees, who are not bound by prior settlements, in the prosecution of future wage and hour violations.
8. Make certain that you have Employment Practices Liability Insurance Coverage from a carrier that will issue a Choice of Defense Counsel Endorsement, which allows you to be represented by a lawyer who will represent both your company and the insurance company's interest; instead of a Duty to Defend Endorsement, which requires the appointment by the insurance company of their lawyer to represent both your company and the insurance company's interests.
9. Do not become an employer who has a reputation of simply rolling over and settling even frivolous lawsuits. Do not get the reputation among the Plaintiff's bar of being an "ATM machine" that spits out money. **If you become an "ATM machine" for even**

frivolous employee lawsuits, then you will be sending the wrong message to your existing employees that if they are fired, they can successfully threaten you and negotiate a “litigation pension.”

10. Companies that fight cases do not have many cases. Join the ranks of these companies in 2016.
11. Enter into a cost effective Monthly Retainer with The Goldstein Law so that you can obtain timely legal advice and counsel on day-to-day labor, employment and wage and hour problems without fear of incurring large legal bills. This is the best way to avoid and/or significantly reduce costly employment lawsuits and claims.
12. **Contact The Goldstein Law Firm to ask about a cost effective monthly retainer.**

II. California Minimum Wage Rises on January 1, 2016:

California’s Minimum Wage rises to \$10. 00 per hour effective January 1, 2016.

III. A New Area of Wage Hour Law that Is Attracting Class Actions – “Reporting Time Pay” – Be Aware of the Effect It Could Have on Your Organization:

California is one of eight (8) states with a reporting time pay law. The Reporting Time Pay provisions of the California Industrial Wage Order states in pertinent part: “(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

Many businesses cannot predict on a day-to-day basis its staffing needs. Staffing needs are driven by customer demand that cannot be predicted. For instance, a restaurant may not know in advance how many servers it may need or a moving and storage company may not know how many moves it will have on a given day or a retail store may not know how many employees it may need in advance. Therefore, based on business necessity that it does not want to be overstaffed, the employer required employees to call into the employer to determine whether they should come to work.

The attorneys who have filed putative wage class actions against major retailers have claimed that requiring employees to call into the employer to determine whether they should physically report to work is tantamount to reporting to work thereby entitling the employee to Reporting Time Pay. There are no California or federal cases that have presently interpreted Reporting Time Pay for an employee who calls in to find out whether there is work available. There have been some attorneys who have argued that the time the employee spends calling in should be compensated as “work time” and the expense of calling in should be reimbursed under California Labor Code Section 2802. Again, this distorted interpretation of the law has

not been adopted by California or federal courts.

What Should You Do To Avoid Reporting Time Pay:

1. Make certain that the Employee Handbook has clear provisions covering Reporting Time Pay.
2. Make certain that the Reporting Time Pay provision states that in order to be entitled to Reporting Time Pay, the employee must report to the work site and not merely report by telephone or other method of communication, his or her willingness to report to work.
3. Make certain that employees are given toll free numbers to call in to find out if there is work on a given day.
4. Where possible give employees sufficient notice in advance when there will be no work available so that they do not have to call into work only to find out that there is no work available.
5. Document when any employee calls in for work and why work was or was not available.
6. Only use the system of employees calling in on a day-to-day basis where there is a business necessity to do so.

IV. First District Court Of Appeals Upholds A Denial of Motion to Compel Arbitration Where Spanish Speaker Signs Agreement to Arbitrate in English Only

In **Ramos v. Westlake Services**, a case involving the purchase of a used car, the car dealership attempted to compel Mr. Ramos to arbitrate his claims against the dealership, Pena's Motors. Ramos alleged that upon his arrival at the dealership, he was greeted by one of this dealership's employees who spoke with him in Spanish. Negotiations for this transaction were conducted primarily in Spanish. Pena's Motors and its employees had authority to sell, and to make representations on behalf of Westlake Services with respect to the sale and the Guaranteed Auto Protection-GAP Waiver form. The GAP form was not provided to Mr. Ramos in Spanish.

At the trial level, there were originally two (2) other Plaintiffs, Castillo and Vasquez who admitted that they received Spanish translations of the contract. The trial court concluded that based on their admission that they had received a Spanish translation of the contract they had failed to show that the arbitration agreement was both procedurally and substantively unconscionable, and granted Westlake Services' Motion to Compel arbitration. As to Mr. Ramos, the trial court denied the motion to compel because the dealership did not

translate the arbitration agreement into Spanish.

On appeal, the Court of Appeal began its analysis by stating that “No law requires that parties dealing at arms’ length have a duty to explain to each other the terms of a written contract. Further one who accepts or signs an instrument, which on its face is a contract, is deemed to assent to all its terms and cannot escape liability on the ground that he has not read it.” The Court then stated: “The circumstances of this case however, are not typical” finding that “All of the facts give rise to a reasonable inference that Ramos has a limited ability to understand English.” Ultimately, the Court sustains the trial court’s denial of the Motion to Compel arbitration of Ramos’ claims because the GAP contract that had been translated into Spanish did not contain the arbitration provision. Only the English contract contained the arbitration provision, and this contract was not translated into Spanish for Ramos.

Four Suggestions For Employers With Employees Who Speak and Read Languages Other Than English To Avoid the Problems Raised by Ramos

1. Make certain that you have your Arbitration Agreement professionally translated into the language of the employee who you want to be bound by the agreement.
2. Develop a presentation for new and existing employees explaining the provisions of the Arbitration Agreement.
3. Make certain that your Employee Handbook is professionally translated into the non – English language that reflects the largest segment of your work force.
4. Have your Employment Application, personnel documents and location specific policies professionally translated into the non – English language that reflects the largest segment of your work force.

THE GOLDSTEIN LAW FIRM PRACTICE AREAS

Employment Law, Wage and Hour Law, Labor Law, Class Actions,
Business Litigation, Contract Disputes, Arbitrations, Corporate and Transactional Law,
Shareholder Disputes, Commercial Law, Appellate Law, Corporate Investigations, Wrongful
Death, Training & Workshops

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